

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION No. 161 OF 2019

(Originating from Economic & Organized Crime Case No. 58 of 2018 at the Resident Magistrate Court of Dar Es Salaam at Kisutu before Hon. Mhina)

BONIFACE MAOMBE.....1st APPLICANT
COLLINS BASHAM MWANG'OMOLAN.....2nd APPLICANT
FRANCIS KAPALATA.....3rd APPLICANT
KASONDE KAPELA.....4th APPLICANT
ENOCK EZABIUS MWANDAJI.....5th APPLICANT

Versus

THE REPUBLICRESPONDENT

RULING

08/11/ - 4/12/2019

J. A. DE-MELLO J;

Before the **Resident Magistrate Court of Dar Es Salaam at Kisutu**, the Applicants stood charged with **five (5) counts** under the **Cyber Crime Act No. 14 of 2015**, and **Economic & Organized Crime Control Act Cap. 200 RE 2002**.

Represented by **State Counsel Ahmed Mwahya** he has accompanied **the Counter Affidavit with Preliminary Points of Objection** with regard to;

The Application is bad in law as the Affidavit contains legal arguments.

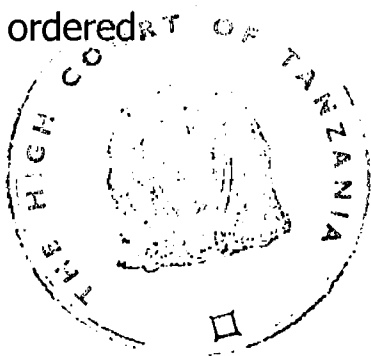
Written submissions was preferred, considering the Applicant's confined in custody and unrepresented. However and, until I attempted to delivered this Ruling on the **18th of November 2019** when hesitated as I adjourned, with a view of ascertaining their predicament but, to no avail. The legal translation for this is that, the objection goes un-opposed. In essence therefore what, Counsel for the Republic asserts towards the said objection and on two folds is, one; **paragraphs 7, 8, 9, 10, 12 & 13** are loaded with legal arguments containing statements based on information whose source is un-disclosed and, or extraneous. Cases of **Arbogast C. Warioba vs. National Insurance Corporation (T) Ltd & Consolidated Holdings Corporation, Civil Appeal No. 24 of 2011** and that of **Uganda vs. Commissioner of Prison Exparte Matovu (1966)** to support the position above. Given the circumstances, in the event the Court finds the defects in-consequential, it can order the

expunging of the offensive paragraphs and proceed with the Application, if substance is still sound, he observed. In view of offences charged against the Applicants, more explicit that of obtaining **money by false pretence** under **paragraphs 6, 7, 8, 10, & 12**, being unrelated for attention of this Court, he contends. With regard to a defective charge sheet on **money laundering count** it is even misconceived at this stage, it being pending before the committal Court. The case of **James Burchad Rugemalila, Criminal Appeal No. 391 of 2017** to fortify this contention was cited. It is premature, he asserts. The existence of **Money Laundering** charge and, not bailable under our laws, and which in view of the **James Burchard's** case (*supra*) this is not bailable under **section 148 (5) (a) (iv)** of the **Criminal Procedure Act Cap. 20** as introduced by **section 19 of Written Laws (Misc. Amendment) Act No. 2 of 2007**. This Court is restrained and by law, to consider bail in such offence and hence its hands are tied, notwithstanding presence of reliable sureties. The ultimate destiny is that the Application has no merit and, qualifies a dismissal, he concluded.

I am in one with **State Counsel** for the Republic that, other than the defects in the Affidavit, the **money laundering charge** clearly depicted

as the **5th count** in the charge sheet against the Applicants. The law under **section 148 (5) (a) (iv)** read together with **section 18 of Act No. 2** is evident. May be a reason why the Applicants muted by not replying to the submissions by the Respondent on the objections. I cannot speculate but, for sure, **non filing of written submissions** attracts **want of prosecution** and whose result is a **dismissal**.

It is ordered




J. A. DE-MELLO

JUDGE

4/12/2019